In the High Court of Punjab and Haryana, Chandigarh

Amended C.W.P. No. 4240 of 2004
Date of Decision: August 22, 2006

Kartar Singh

…Petitioner

Versus

State of Haryana and others

…Respondents

**CORAM: HON'BLE MR. JUSTICE M.M. KUMAR.**
**HON'BLE MR. JUSTICE M.M.S. BEDI.**

PRESENT: Mr. Ravi Verma, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana,
for respondent Nos. 1 to 3.

Mr. Ram Kumar Malik, Advocate,
for respondent No. 4.

**JUDGMENT**

**M.M. KUMAR, J.**

The prayer made in this amended petition filed under Article 226 of the Constitution is that petitioner being an ex-serviceman, was entitled to preference over a dependent of ex-servicemen, in terms of the advertisement dated 18.10.2003 (P-2). The petitioner has alternative higher qualification as against essential qualification.

Brief facts are that on 18.10.2003, the Haryana Staff Selection Commission (respondent No. 3) has advertised 140 posts of Hindi Teachers and 10 posts were reserved for Ex-Servicemen General Category. The petitioner possessed the qualification of B.A. with an elective subject of Hindi, B.Ed. with a teaching subject of Hindi and M.A. in the subject of Hindi. According to the advertisement dated 18.10.2003 (P-2), the essential qualification was Matric from the Haryana School Education Board or an equivalent qualification recognized by it. The other essential qualifications laid down in the advertisement are, Prabhakar/B.A. (Hons. in Hindi) from a recognized University, L.T.C. OT in Hindi conferred by the Haryana Education Department or B.A. (Hons. in Hindi) with B.T./B.Ed with Hindi as teaching subject from a recognized University. However, according to the 'Note', it was clarified that in case the candidates of above mentioned essential qualification were not available then B.A. with Hindi as an elective subject with B.T./B.Ed with Hindi as teaching subject were to be considered. The advertisement also required knowledge of Hindi up to Martic standard.

The petitioner who had the qualification of B.A. with an elective subject of Hindi, B.Ed. with a teaching subject of Hindi and M.A. in the subject of Hindi, obviously, answered the alternative qualification laid in the note. He was not considered eligible and accordingly post was shifted to the dependent of Ex-servicemen-respondent No. 4, who answered the essential qualification. The

question raised in the instant petition is as to whether an Ex-servicemen category is to be preferred over a dependent of an Ex-serviceman, who had higher alternative qualification given in the 'Note' or a dependent of an Ex-serviceman with essential qualification is to be preferred.

The matter is not res-integra as a Division Bench of this Court in similar situation has held that Ex-serviceman with alternative qualification as given in the 'Note' is to be preferred. In that regard reference may be made to the case of **Subhash Chander and another v. The State of Haryana and others,** (Civil Writ Petition No. 8754 of 1999, decided on 7.5.2001). The view of the Division Bench is discernible from the following paras of the judgment:-

> " The aforesaid reading of the advertisement clearly shows that the first preferential right is available to the ex-servicemen. They in any event had to be preferred to the dependents of ex-servicemen. Amongst the ex servicemen, the first right is available to the persons having passed two years Junior Basic Training Course from the Haryana Education Board. In case the candidates having passed the Junior Basic Training Course were not available, the persons having B.A. B.Ed. qualification or B.Sc. B.Ed. qualification could be considered. Those persons who are having B.A. B.Ed qualification and are ex-servicemen necessarily in the sequence could be considered in case the candidates

having passed the Junior Basic Training Course are not available. In any event, they had to be preferred to the dependents of the ex-servicemen. Once, it is so, the action of the official respondents in selecting the dependents of the ex-servicemen cannot be approved. It is contrary to the advertisement. The result is clear that the said selection cannot stand scrutiny.

For those reasons, we allow both the writ petitions and direct that (a) if the posts are available, the claim of the petitioners, who are ex-servicemen and possessing qualifications of B.A. B.Ed. may be considered; (b) in case the posts are not available, indeed the petitioners could still be considered if the petitioners are found suitable as against the posts that have been made available to the respondents No. 4 and 5; (c) in case respondents No. 4 and 5 have to be removed from service who have not been recruited in accordance with the advertisement, a show cause notice, before taking any such action, to such private respondents be issued; and (d) in case the petitioners are not found suitable, indeed further action in this regard need not be taken." (Emphasis added)

In view of the above, we dispose of this petition in terms of the aforementioned directions issued by the Division Bench in Subhash Chander's case (supra). The respondents shall proceed to

give effect to the directions issued by us in terms of Subhash Chander's case (supra), within a period of two months from the date a certified copy of this order is produced before them. Our direction may not be construed to imply that respondent No. 4 must be removed from service. He has been working for the last about two years and belongs to the category of dependent of Ex-servicemen. The official respondents shall make all efforts to retain him in service also subject to all just exception.

The petition stands disposed of in the above terms.

**(M.M. KUMAR)**
**JUDGE**

**(M.M.S. BEDI)**
**JUDGE**

**August 22, 2006**
Pkapoor